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Instruction Memorandum No. 2015-124
Expires: 09/30/2018

To: All Field Office Officials

From: Assistant Director, Energy, Minerals, and Realty Management

Subject: Re-engineered Communitization Agreement Approval Process

Program Area: Oil and Gas Reservoir Management and Operations.

Purpose: This Instruction Memorandum (IM) establishes a streamlined process for adjudication and approval of Communitization Agreements (CA), and directs offices to cease using the "Pre-CA" process. It also establishes a standard for data entry of lease information into the Automated Fluid Minerals Support System (AFMSS) for horizontal wells.

Policy/Action: This IM consolidates the best practices performed by a number of Bureau of Land Management (BLM) States in the adjudication and processing of CAs into a national policy. This IM amends BLM Manual 3160-9, Communitization (Manual).

The responsibility of the BLM and the Bureau of Indian Affairs (BIA) is to protect and adjudicate only the Federal and Indian interests during the processing of CAs. Therefore, the BLM will implement the following procedure:

- The BLM and the BIA will process CAs in accordance with the roles defined for each agency in Attachment A of the Onshore Energy and Mineral Lease Management Interagency Standard Operating Procedures.
- The BLM will adjudicate only the Federal interests (leased and unleased) within the proposed communitized area and will not adjudicate non-Federal interests. The BIA will adjudicate only the Indian interests (leased and unleased) within the proposed communitized area and will not adjudicate non-Indian interests.
- The BLM will verify the total acreage and land description of the proposed CA against General Land Office plats.
- The BLM will allow the operator to self-certify the acquisition of the necessary signatures. The necessary signatures are all working interest owners and record title owners in the Federal and Indian leases. Operators should submit the following statement with their CAs:

- I, the undersigned, hereby certify, on behalf of _____, the Operator of the proposed Communitization Agreement, that all working interest owners (*i.e.*, lessees of record and operating rights owners) shown on Exhibit “B” attached to the Communitization Agreement are, to the best of my knowledge, the working interest owners of the Federal or Indian leases subject to the Communitization Agreement, and that the written consents of all of the named owners have been obtained and will be made available to the BLM immediately upon request.

If this statement does not accompany the CA, the BLM official will require the operator to submit copies of all the necessary signatures.

- The BIA will follow its internal guidance regarding verification of the necessary signatures.
- If the surface location of the communitized well is not within the communitized area, the operator shall furnish to the BLM a copy of a document in which the surface owner(s) or the surface owner(s)’ legally authorized representative or agent agrees to allow surface access by the BLM for monitoring of production and measurement under the CA.
- The BLM’s goal is to have an approved CA in place before the date of first production. This will allow the operator to pay royalties to the proper leases from the start of production. The BLM will work with industry and encourage the operator to submit a CA to the appropriate agency (BLM or BIA) at the same time the operator submits an Application for Permit to Drill (APD) or at least 90 days before the anticipated date of first production. In cases where (1) no CA is already in place; (2) a CA is necessary; (3) a Federal APD is required; and (4) the operator has not submitted a CA before approval of an APD, the BLM will require, as a condition of approval of an APD, the operator to submit a CA to the appropriate agency at least 90 days before the anticipated date of first production. In these cases, the field offices (FO) will include the following condition of approval with each approved APD:
 - The operator will submit a Communitization Agreement to the _____ (office and address) at least 90 days before the anticipated date of first production from a well subject to a spacing order issued by the _____ (include name of the state regulatory agency). The Communitization Agreement will include the signatures of all working interest owners in all Federal and Indian leases subject to the Communitization Agreement (*i.e.*, operating rights owners and lessees of record), or certification that the operator has obtained the written signatures of all such owners and will make those signatures available to the BLM immediately upon request.
 - If the operator does not comply with this condition of approval, the BLM may take enforcement actions that include, but are not limited to, those specified in 43 CFR 3163.1.
- In situations where a proposed well will not penetrate Federal or Indian minerals, a Federal APD is not required, and therefore the BLM will not be able include the condition of approval. In these situations, the BLM will work with industry and encourage operators to submit a CA request to the BLM at least 90 days before the anticipated date of first production. The BLM will also work with State regulatory agencies and request that when a CA is necessary, the regulatory agency include language in an approved spacing order requiring the operator to submit a CA to the BLM at least 90 days before the anticipated date of first production.

- The BLM will modify the requirements for Exhibit A (as shown in the Manual) of a CA to allow the operator to identify all of the non-Federal/non-Indian interests as a single tract.
- The BLM will modify the requirements for Exhibit B (as shown in the Manual) of a CA to allow the operator to aggregate all the non-Federal/non-Indian interests into a single entry titled “Other Interests,” with total aggregate acreages.
- The BLM will modify the requirements of the Recapitulation Table (as shown in the Manual) to allow the operator to aggregate all of the non-Federal/non-Indian interests into a single tract with the total aggregate number of acres committed to the agreement and the total aggregate percentage of interest in the communitized area.
- The BLM will also allow the operator to eliminate the lease date, lease term, lessor, lessee on effective date of agreement if different from present lessee, royalty rate, and name and percent of overriding royalty owners currently required in Exhibit B (see Attachment 1). Since the operator will combine all of the non-Federal/non-Indian leases, this information is not necessary for the non-Federal/non-Indian leases, and the BLM or BIA already has all of the information for the Federal and Indian leases.
- For CAs pending before implementation of the modifications to Exhibits A and B (as shown in the Manual), the BLM and BIA will adjudicate only the Federal and Indian interests, respectively.
- The BLM will include a disclaimer in all CA approval letters as follows:
 - Approval of this agreement does not constitute an adjudication of any state, local government, or private interests, and does not constitute a warranty or certification that the information supplied by the party submitting this agreement regarding any private, state, or local government interests is accurate.

In addition, this IM establishes policy that the FOs must enter each new horizontal well in AFMSS using the first Federal or Indian lease penetrated within the producing zone until the BLM modifies AFMSS to enable more than one lease entry per well.

The BLM will provide a copy of approved Federal CAs to the Office of Natural Resources Revenue (ONRR) within 10 working days after BLM’s approval. The copy must include the agreement approval letter and agreement Exhibits A and B. If the CA is producing, the BLM must also provide a first production memorandum. If the CA does not begin producing until after the BLM approves the agreement, the BLM must provide a first production memorandum to the ONRR when the CA does begin producing (see BLM Handbook 3107, Continuation, Extension, or Renewal of Leases).

Timeframe: This policy is effective upon issuance.

Budget Impact: Implementation of this IM will result in decreased time required for review of CAs.

Background: The current demand for approval of CAs has exceeded the BLM’s and BIA’s capacity in some offices. This backlog of CA approvals has created significant delays in the correct payment and distribution of royalties. This is particularly an issue with horizontal wells where production is coming from more than one of multiple leases along the producing horizontal interval.

As a result of the delay in CA approvals, the ONRR, the BIA Fort Berthold Agency, and the BLM North Dakota Field Office developed a process called the "Pre-CA" for Indian CAs, which facilitated payment of royalties based on a preliminary allocation schedule. However, the "Pre-CA" gives rise to a number of legal issues. Therefore, offices must cease using the "Pre-CA" process. To expedite the processing of CAs to ensure proper payment and allocation of royalties, the BLM redefined the Federal responsibility, as articulated above, and the application of that responsibility with respect to the processing of CAs. The application of this re-engineered process should dramatically reduce CA adjudication and processing time, thereby enabling the BLM, and BIA where appropriate, to approve CAs before receipt of the notice of first production.

The BLM did not design the current version of AFMSS to manage horizontal wells that are often completed and producing from multiple leases. When the BLM receives an APD from an operator, the BLM must enter the well in AFMSS using a single lease number. Some offices are using the first Federal/Indian lease penetrated while other offices are using the last Federal/Indian lease penetrated. This has caused confusion for the operators and for ONRR in the payment and distribution of royalties. To eliminate the inconsistency and the confusion, this IM establishes policy that the FOs must enter each horizontal well in AFMSS using the first Federal/Indian lease penetrated within the producing zone. Future enhancements of AFMSS will accommodate multiple lease entries.

Manual/Handbook Section Affected: BLM Manual 3160-9, Communitization, will incorporate the interim policy contained in this IM during its next revision.

Coordination: WO-310 coordinated preparation of this IM with state and FOs, the ONRR, the BIA, and the Office of the Solicitor.

Contact: If you have any questions concerning the content of this IM, please contact me at 202-208-4201, or your staff may contact Steven Wells, Chief, Division of Fluid Minerals, at 202-912-7143, James Stockbridge, Indian Trust Specialist, at 303-239-3777, or William Lambert, Petroleum Engineer, at 406-896-5328.



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Attachment

1 – Sample Exhibit B for Communitization Agreements (1 p)

Sample Exhibit B for Communitization Agreements

Current Requirements from manual 3160-9

For all tracts:

Tract No.:
Lease Serial No.:
Lease Date:
Lease Term:
Lessor:
Lessee on effective date of agreement if different from present lessee:
Present Lessee:
Description of Lands Committed:
Number of Acres:
Royalty Rate:
Name and Percent of ORRI Owners:
Name and Percent WI Owners;

Re-engineered Requirements

For Federal/Indian tracts:

Tract No.:
Lease Serial No.:
Description of Land Committed:
Number of Acres:
Lessee of Record:
Name and Percent WI Owners:

For non-Federal/Indian Tracts

Tract No.:
Description of Land Committed:
Number of Acres: